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## RAJYA SABHA

The following Bills were introduced in the Rajya Sabha on the 24th August, 1976:—

I

BILL NO. XXXVI OF 1976

*A Bill to amend the Code of Criminal Procedure, 1973.*

BE it enacted by Parliament in the Twenty-seventh Year of the Republic of India as follows:—

**Short title.**

1. This Act may be called the Code of Criminal Procedure (Amendment) Act, 1976.

**Amendment of section 2.**

2 of 1974

2. In the Code of Criminal Procedure, 1973 (hereinafter referred to as the principal Act), in section 2, in clause (*j*), the words "and such local area may comprise the whole of the State, or any part of the State, as the State Government may, by notification, specify" shall be inserted at the end.

**Amendment of section 9.**

3. In section 9 of the principal Act, to sub-section (6), the following proviso shall be added, namely:—

"Provided that the High Court may, if requested by the Central Government or State Government so to do in the interests of the security of the accused person or for the maintenance of public order or for any other like reason, by an order direct a Court of Session to hold its sitting at such other place within its local jurisdiction (including a prison or other place where the accused person is detained) as may be specified in the order.".

Amendment of section 11.

4. In section 11 of the principal Act, to sub-section (*1*), the following proviso shall be added, namely:—

"Provided that the State Government may, after consultation with the High Court, establish, for any local area, one or more Special courts of Judicial Magistrates of the first class or of the second class to try any particular case or particular classes of cases, and where any such Special court is established, no other court of Magistrate in the local area shall have jurisdiction to try any case or classes of cases for the trial of which such Special court of Judicial Magistrate has been established.".

Amendment of section 13.

5. In section 13 of the principal Act,—

(*i*) in sub-section (*1*), for the words "of the second class, in respect to particular cases or to particular classes of cases or to cases generally, in any district, not being a metropolitan area:", the words "of the first class or of the second class, in respect to particular cases or to particular classes of cases, in any local area, not being a metropolitan area:" shall be substituted;

(*ii*) in the proviso to sub-section (*1*), after the words "shall be conferred", the words ", under this sub-section," shall be inserted;

(*iii*) for sub-section (*2*), the following sub-sections shall be substituted, namely:—

"(*2*) Notwithstanding anything contained in sub-section (*1*), or elsewhere in this Code, the State Government may confer on any gazetted officer functioning as an Executive Magistrate, the powers of a Judicial Magistrate of the first class or of the second class to try such offences or classes of offences as are punishable,—

(*i*) under section 160, or under Chapter XIII, or under Chapter XIV, of the Indian Penal Code, with imprisonment for a term not exceeding one year, or with fine, or with both; or 45 of 1860.

(*ii*) under section 34 of the Police Act, 1861, or under any other special law for the time being in force, with imprisonment for a term not exceeding one year, or with fine, or with both. 5 of 1861.

(*3*) The persons on whom the powers of a Magistrate are conferred under sub-section (*1*) or under sub-section (*2*), as the case may be, shall be called Special Judicial Magistrates and shall be appointed for such term, not exceeding one year at a time, as the High Court, or the State Government in the case of a person on whom any power has been conferred by it under sub-section (*2*), may, by general or special order, direct.

(*4*) The High Court, or the State Government, as the case may be, may empower a special Judicial Magistrate to exercise the powers of a Metropolitan Magistrate in relation to any metropolitan area outside his local jurisdiction.".

Amendment of section 14.

6. In section 14 of the principal Act,—

(*a*) to sub-section (*1*), the following provisos shall be added, namely:—

"Provided that the High Court may, if requested by the Central Government or State Government so to do in the

interests of the security of the accused person or for the maintenance of public order or for any other like reason, by an order direct a court of a Judicial Magistrate to hold its sitting at such place within its local jurisdiction (including a prison or other place where the accused person is detained) as may be specified in the order:

Provided further that the court of a Special Judicial Magistrate may hold its sitting at any place within the local area for which it is established.";

(*b*) after sub-section (*2*), the following sub-section shall be inserted, namely:—

"(*3*) Where the local jurisdiction of a Magistrate, appointed under section 11 or section 13 or section 18, extends to an area beyond the district, or the metropolitan area, as the case may be, in which he ordinarily holds Court, (hereafter in this sub-section referred to as the original district), any reference in this Code to the Court of Session, Chief Judicial Magistrate or the Chief Metropolitan Magistrate shall, in relation to such Magistrate, throughout the area within his local jurisdiction, be construed, unless the context otherwise requires, as a reference to the Court of Session, Chief Judicial Magistrate, or Chief Metropolitan Magistrate, as the case may be, exercising jurisdiction in relation to the original district or metropolitan area.".

**7. In section 18 of the principal Act,—** Amendment of section 18.

(*i*) in sub-section (*1*), the words "or to cases generally" shall be omitted;

(*ii*) in the proviso to sub-section (*1*), after the words "shall be conferred", the words ", under this sub-section," shall be inserted;

(*iii*) for sub-sections (*2*) and (*3*), the following sub-sections shall be substituted, namely:—

"(*2*) Notwithstanding anything contained in sub-section (*1*), or elsewhere in this Code, the State Government may confer on any gazetted officer, functioning as an Executive Magistrate, the powers of a Metropolitan Magistrate to try such offences or classes of offences as are punishable,—

45 of 1860. (*a*) under section 160, or under Chapter XIII, or under Chapter XIV, of the Indian Penal Code, with imprisonment for a term not exceeding one year, or with fine, or with both;

5 of 1861. (*b*) under section 34 of the Police Act, 1861, or under any other special law for the time being in force, with imprisonment for a term not exceeding one year, or with fine, or with both.

(*3*) The persons on whom the powers of a Magistrate are conferred under sub-section (*1*) or sub-section (*2*), as the case may be, shall be called Special Metropolitan Magistrates and shall

be appointed for such term, not exceeding one year at a time, as the High Court, or the State Government in the case of a person on whom any power has been conferred by it under sub-section (*2*), may, by general or special order, direct.

(*4*) The High Court or the State Government, as the case may be, may empower any Metropolitan Magistrate to exercise, in any local area outside the metropolitan area, the powers of a Judical Magistrate of the first class.".

Amendment of section 24.

8. In section 24 of the principal Act,—

**(*i*) in sub-section (*1*), after the words "Public Prosecutor", the words "and may also appoint one or more Additional Public Prosecutors" shall be inserted;**

(*ii*) after sub-section (*6*), the following sub-section shall be inserted, namely:—

"(*7*) For the purposes of sub-sections (*5*) and (*6*), the period during which a person has been in practice as a pleader or has rendered service as a Public Prosecutor, Additional Public Prosecutor or Assistant Public Prosecutor shall be deemed to be the period during which such person has been in practice as an advocate.".

Amendment of section 25.

**9. In section 25 of the principal Act,—**

**(*i*) in sub-section (*1*), for the words "The State Government", the words "The Central Government or the State Government" shall be substituted;**

**(*ii*) after sub-section (*3*), the following sub-section shall be inserted, namely:—**

"(*4*) Nothing contained in this section shall preclude the State Government from conferring on the Inspector General of Police the powers of administrative control and supervision over the Assistant Public Prosecutors appointed by it.".

Amendment of section 107.

**10.** In section 107 of the principal Act, in sub-section (*1*), after the words "ordered to execute a bond.", the words "with or without sureties," shall be inserted.

Amendment of section 123.

**11.** In section 123 of the principal Act,—

(*i*) in sub-section (*1*), for the words "the Chief Judicial Magistrate", the words and figures "the District Magistrate in the case of an order passed by an Executive Magistrate under section 117, or the Chief Judicial Magistrate in any other case" shall be substituted;

(*ii*) in sub-sections (*2*), (*5*), (*6*), (*7*) and (*9*), for the words "Chief Judicial Magistrate", wherever they occur, the words and

figures "District Magistrate, in the case of an order passed by an Executive Magistrate under section 117, or the Chief Judicial Magistrate in any other case" shall be substituted.

Amendment of section 164.

12. In section 164 of the principal Act, after sub-section (*1*), the following sub-section shall be inserted, namely:—

"(*1A*) Subject to the other provisions of this section, the powers conferred by sub-section (*1*) may also be exercised by a person on whom the powers of a Judicial Magistrate of the first class have been conferred under section 13 or a person on whom the powers of a Metropolitan Magistrate have been conferred under section 18.".

Amendment of section 167.

13. In section 167 of the principal Act, in the proviso to sub-section (*2*),—

(*a*) for paragraph (*a*), the following paragraph shall be substituted, namely:—

"(*a*) the Magistrate may authorise the detention of the accused person, otherwise than in the custody of the police, beyond the period of fifteen days, if he is satisfied that adequate grounds exist for doing so, but no Magistrate shall authorise the detention of the accused person in custody under this paragraph for a total period exceeding,—

(*i*) one hundred and twenty days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than ten years;

(*ii*) sixty days, where the investigation relates to any other offence,

and, on the expiry of the said period of one hundred and twenty days, or sixty days, as the case may be, the accused person shall be released on bail if he is prepared to and does furnish bail, and every person released on bail under this sub-section shall be deemed to be so released under the provisions of Chapter XXXIII for the purposes of that Chapter;";

(*b*) in paragraph (*b*), for the words "no Magistrate shall", the words "no Magistrate shall, except for reasons to be recorded in writing," shall be substituted;

(c) the *Explanation* shall be numbered as *Explanation II*, and before *Explanation II*, as so numbered, the following *Explanation* shall be inserted, namely:—

"*Explanation I.*—For the avoidance of doubts, it is hereby declared that, notwithstanding the expiry of the period specified in paragraph (*a*), the accused shall be detained in custody so long as he does not furnish bail.";

(*d*) after sub-section (*2*), the following sub-section shall be inserted, namely:—

"(*2A*) Notwithstanding anything contained in sub-section (*1*) or sub-section (*2*), the officer in charge of the police station or the police officer making the investigation, if he is not below

the rank of a sub inspector, may, where a Judicial Magistrate is not available, transmit to the nearest Executive Magistrate, on whom the powers of a Judicial Magistrate or Metropolitan Magistrate have been conferred, a copy of the entry in the diary hereinafter prescribed relating to the case, and shall, at the same time, forward the accused to such Executive Magistrate, and thereupon such Executive Magistrate, may, for reasons to be recorded in writing, authorise the detention of the accused person in such custody as he may think fit for a term not exceeding seven days in the aggregate; and, on the expiry of the period of detention so authorised, the accused person shall be released on bail if he is prepared to and does furnish bail except where an order for the further detention of the accused person has been made by a Magistrate competent to make such order; and, where an order for such further detention is made, the period during which the accused person was detained in custody under the orders made by an Executive Magistrate under this sub-section, shall be taken into account in computing the period specified in paragraph (a) of the proviso to sub-section (2):

Provided that no Executive Magistrate, on whom the powers of a Judicial Magistrate of the second class have been conferred, shall, unless specially empowered in this behalf by the High Court, authorise detention in the custody of the police:

Provided further that on the expiry of the period aforesaid, the Executive Magistrate shall forthwith transmit to the nearest Judicial Magistrate the records of the case together with a copy of the entries in the diary relating to the case which was transmitted to him by the officer in charge of the police station or the police officer making the investigation, as the case may be.".

Amendment of section 167 to apply to pending investigations.

14. The provisions of section 167 of the principal Act, as amended by this Act, shall apply to every investigation pending immediately before the commencement of this Act, if the period of detention of the accused person, otherwise than in the custody of the police, had not, at such commencement, exceeded sixty days.

Amendment of section 182.

15 In section 182 of the principal Act, in sub-section (2), after the words "by the first marriage", the words ", or the wife by the first marriage has taken up permanent residence after the commission of the offence" shall be inserted

Amendment of section 196.

16. In section 196 of the principal Act, in sub-section (2), for the words "a cognizable offence", the words "an offence" shall be substituted.

Amendment of section 198.

17. In section 198 of the principal Act, in clause (c) of the proviso to sub-section (1),—

(*i*) for the word and figures "section 494", the words and figures "section 494 or section 495" shall be substituted;

(*ii*) after the words "mother's brother or sister", the words ", or, with the leave of the court, by any other person related to her by blood, marriage or adoption" shall be inserted.

18. In section 206 of the principal Act, after sub-section (2), the following sub-section shall be inserted, namely:— Amendment of section 206.

"(3) The State Government may, by notification, specially empower any Magistrate to exercise the powers conferred by sub-section (1) in relation to any offence punishable with imprisonment for a term not exceeding three months, or with fine, or with both, where the Magistrate is of opinion that, having regard to the facts and circumstances of the case, the imposition of fine only would meet the ends of justice.".

19. In section 208 of the principal Act,— Amendment of section 208.

(i) in the proviso, after the words "such document is voluminous", the words "or is of such a nature that it is not practicable to furnish a copy thereof" shall be inserted;

(ii) after the proviso, the following proviso shall be inserted, namely:—

"Provided further that no inspection, referred to in the foregoing proviso, shall be allowed if the head of the department, having custody of such document, claims on affidavit that the disclosure of such document would be prejudicial to the public interest or the security of the State.".

20. In section 209 of the principal Act, for clause (a), the following clause shall be substituted, namely:— Amendment of section 209.

"(a) commit, after complying with the provisions of section 207 or section 208, as the case may be, the case to the Court of Session, and subject to the provisions of this Code relating to bail, remand the accused to custody until such commitment has been made;".

21. In section 276 of the principal Act, for sub-section (2), the following sub-section shall be substituted, namely:— Amendment of section 276.

"(2) Such evidence shall ordinarily be taken down in the form of a narrative, but the presiding Judge may, in his discretion, take down, or cause to be taken down, any part of such evidence in the form of questions and answers.".

22. In section 277 of the principal Act, in clause (a), after the words "taken down in that language", the words "or if it is not practicable to do so, it shall be taken down in Hindi or in English" shall be inserted. Amendment of section 277.

23. In section 297 of the principal Act, in sub-section (1), for clause (a), the following clause shall be substituted, namely:— Amendment of section 297.

"(a) any Judge or any Judicial or Executive Magistrate, or".

24. In section 299 of the principal Act, in sub-section (1), after the words "competent to try", the words ", or to commit for trial," shall be inserted. Amendment of section 299.

25. In section 309 of the principal Act, in sub-section (2), after the second proviso, the following proviso shall be inserted, namely:— Amendment of section 309.

"Provided also that no adjournment shall be granted for the purpose only of enabling the accused person to show cause against the sentence proposed to be imposed on him.".

Amendment of section 320.

26. In section 320 of the principal Act, in the Table under sub-section (*1*), in column 1, for the word "Defamation", the words, figures and brackets "Defamation, except such cases as are specified against section 500 of the Indian Penal Code in column 1 of the Table under sub-section (*2*)" shall be substituted. 45 of 1860.

Amendment of section 323.

27. In section 323 of the principal Act, the following shall be inserted at the end, namely:—

"and thereupon the provisions of Chapter XVIII shall apply to the commitment so made".

Amendment of section 326.

28. In Section 326 of the principal Act,—

(*i*) in sub-section (*1*), for the word "Magistrate", wherever it occurs, the words "Judge or Magistrate" shall be substituted;

(*ii*) in sub-section (*2*), for the words "from one Magistrate to another Magistrate", the words "from one Judge to another Judge or from one Magistrate to another Magistrate" shall be substituted.

Amendment of section 374.

29. In section 374 of the principal Act, in sub-section (*2*), for the words "has been passed", the words "has been passed against him or against any other person convicted at the same trial" shall be substituted.

Amendment of section 428.

30. In section 428 of the principal Act, after the words "sentenced to imprisonment for a term,", the words "not being imprisonment in default of payment of fine," shall be inserted.

Omission of section 438.

31. Section 438 of the principal Act, shall be omitted.

Amendment of section 468.

32. In section 468 of the principal Act, after sub-section (*2*), the following sub-section shall be inserted, namely:—

"(*3*) For the purposes of this section, the period of limitation, in relation to offences which may be tried together, shall be determined with reference to the offence which is punishable with the longest term of imprisonment.".

Amendment of section 478.

33. In section 478 of the principal Act,—

(*i*) the words "after consultation with the High Court," shall be omitted;

(*ii*) in clause (*a*), after the figures "110", the words "or in any of them" shall be inserted;

(*iii*) in clause (*b*), after the figures "147", the words "or in any of them" shall be inserted.

## STATEMENT OF OBJECTS AND REASONS

The Code of Criminal Procedure, 1973 came into force on the 1st day of April, 1974. The working of the new Code has been carefully watched and in the light of the experience, it has been found necessary to make a few changes for removing certain difficulties and doubts. The notes on clauses explain in brief the reasons for the amendments.

NEW DELHI;
*The 17th August*, 1976.

F. H. MOHSIN

*Notes on clauses*

*Clause* 2.—Under the Code, the local jurisdiction of a Magistrate is limited to the district. The definition of the expression "local jurisdiction" in section 2(*j*) is being amended to empower the State Government to define, the local jurisdiction as extending to the whole of the State or to any part thereof in the case of Special Courts or Special Magistrates, wherever necessary.

*Clause* 3.—Under the Code, a Court of Session ordinarily holds its sitting at the place or places specified by the High Court. Sub-section (*6*) of section 9 is being amended to empower the High Court to direct a Court of Session to hold its sitting at any place (other than its normal place of sitting), including a prison or other place, where the accused is detained. This power can be exercised only when it is necessary to do so in the interests of the security of the State or for the protection of the accused person or maintenance of public order or for any other like reason.

*Clause* 4.—Sub-section (*1*) of section 11 is being amended to empower the State Government to establish Special Courts of Judicial Magistrates having jurisdiction throughout any local area and to confer on such courts exclusive jurisdiction to try any particular case or particular classes of cases.

*Clause* 5.—The amendment to sub-section (*1*) of section 13 seeks to enable Special Judicial Magistrates to exercise jurisdiction over any local area. Powers of a Magistrate of the first class can also be conferred on them. The proviso to sub-section (*1*) is being amended to make it clear that the qualifications, referred to therein, are required to be possessed only by those persons on whom powers are conferred under sub-section (*1*).

The State Government is being empowered to confer, on any gazetted officer functioning as an Executive Magistrate, the powers of a Judicial Magistrate of the first or of the second class to try the types of offences specified in sub-section (*2*).

The High Court or the State Government, as the case may be, is being empowered to authorise a Special Judicial Magistrate to exercise the powers of a Special Metropolitan Magistrate in relation to any metropolitan area outside his local jurisdiction.

*Clause* 6.—Section 14(*1*) is being amended to empower the High Court to direct the Court of a Judicial Magistrate to hold its sitting at any place (other than the normal place of its sitting), including a prison or other place, where the accused is detained. This power can be exercised only when it is necessary to do so in the interests of the security of the accused person or maintenance of public order or for any other like reason.

New sub-section (3) is being inserted in section 14 to provide that, where the local jurisdiction of a Magistrate extends beyond a district or a metropolitan area in which he ordinarily holds his Court references in the Code to the Court of Session or Chief Judicial Magistrate or Chief Metropolitan Magistrate shall, in relation to the entire area in the local jurisdiction be construed as references to the Court of Session, Chief Judicial Magistrate or Chief Metropolitan Magistrate, as the case may be, exercising jurisdiction over the district in which he ordinarily holds his Court.

*Clause* 7.—The proviso to sub-section (1) of section 18 is being amended to clarify that persons, on whom the powers of Metropolitan Magistrates are conferred under sub-section (2), need not have the prescribed qualifications.

The State Government is being empowered to appoint a gazetted officer, functioning as an Executive Magistrate, as a Metropolitan Magistrate to try the types of offences specified in the section.

The High Court or the State Government, as the case may be, is being empowered to authorise a Special Metropolitan Magistrate to exercise powers of a Judicial Magistrate in any area outside his local jurisdiction.

*Clause* 8.—Sub-section (1) of section 24 is being amended to enable the appointment of Additional Public Prosecutors.

New sub-section (7) is being inserted to provide that for the purpose of determining the eligibility of a person for appointment as a Public Prosecutor or Additional Public Prosecutor or Special Public Prosecutor the period of his practice as a pleader or service as a Public Prosecutor or as Additional Public Prosecutor or as an Assistant Public Prosecutor will be reckoned as the period of his practice as an advocate. This is intended to remove certain difficulties.

*Clause* 9.—Section 25 is being amended to empower the Central Government to appoint Assistant Public Prosecutors, whenever necessary.

New sub-section (4) is being inserted to clarify that the provisions of the section will not preclude the State Government from conferring on the Inspector-General of Police the powers of administrative control and supervision over the Assistant Public Prosecutors appointed by it. This is intended to remove some doubts on the matter.

*Clause* 10.—Section 107 of the Code is being amended to provide that a person concerned may be required to execute the bond with or without sureties. The amendment has become necessary to enable the Government to deal effectively with cases of breach of the peace.

*Clause* 11.—Section 123 of the Code is being amended to empower the District Magistrate to release persons imprisoned for failure to give security in a case where such person was ordered by an Executive Magistrate to furnish security.

*Clause* 12.—Section 164 is being amended to provide that a Special Judicial Magistrate of the first class will also be competent to record a

confession or statement. This is intended to facilitate the recording of such confession or statement in remote localities and to avoid as far as possible the need for having them recorded by the Magistrate having jurisdiction to try the case.

*Clause* 13.—Section 167 is being amended to empower the Magistrate to authorise detention, pending investigation, for an aggregate period of 120 days in cases where the investigation relates to offences punishable with death, imprisonment for life or imprisonment for ten years or more and up to 60 days in any other case. These amendments are intended to remove difficulties which have been actually experienced in relation to the investigation of offences of a serious nature.

A new sub-section is being inserted empowering an Executive Magistrate, on whom the powers of a Judicial Magistrate or Metropolitan Magistrate have been conferred under section 13 or section 18 to make an order for remand of an accused for a period not exceeding seven days in the aggregate. The period of detention ordered by such a Magistrate will, however, be taken into account in computing the total period specified in clause (*a*). This is being done with a view to overcoming the difficulties arising out of a shortage of judicial magistrates in the remote areas.

Clause (*b*) of the proviso to sub-section (*2*) is being amended to provide that the requirement that the accused person should be produced before the Magistrate making an order for remand may be waived by the Magistrate for the reasons to be recorded by him.

A new *Explanation* is being inserted to clarify that, where the accused person does not furnish bail within the period specified in paragraph (*a*), the accused person would continue to be in detention.

*Clause* 14.—Clause 14 clarifies that the amendments made to section 167 would apply to pending investigations.

*Clause* 15.—Section 182 is being amended to enable a complaint by a woman relating to an offence of bigamy to be made at the place of permanent residence of the aggrieved woman after the offence. This is intended to afford the much needed relief to such woman.

*Clause* 16.—Sub-section (*2*) of section 196 restricts the power of the Court to take cognizance of the offence of any criminal conspiracy punishable under section 120B, I.P.C., other than a criminal conspiracy to commit a cognizable offence which is punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards. The sub-section is being amended to extend the exception to all offences falling within the sub-section, including non-cognizable offences.

*Clause* 17.—Section 198 is being amended to provide that a complaint of an offence of bigamy may be filed also by any other person related to the wife by blood, marriage or adoption, after obtaining leave of court. This is intended to afford the much needed help to the aggrieved woman in such cases.

*Clause* 18.—New sub-section (*3*) is being inserted in section 206 to enlarge the scope of the facility provided by that section so that the State Government may specially empower a Magistrate to exercise the powers conferred by sub-section (*1*) in relation to any offence punishable with imprisonment for a term not exceeding three months, where a

Magistrate is of opinion that imposition of fine only would meet the ends of justice.

*Clause* 19.—Section 208 is being amended to provide that, instead of giving a copy of the document, inspection may be allowed if the document is of such a nature that it is not in public interest to furnish a copy thereof.

A new proviso is being inserted to provide that no copy will be furnished and no such inspection will be allowed if the head of the department, having custody of the document claims on affidavit that the disclosure of the document will be prejudicial to public interest.

*Clause* 20.—Clause (*a*) of section 209 is being substituted by a new clause to clarify that the commitment is to be made after complying with the provisions of section 207 or 208 and that the committing Court will have the power to make an order for the remand of the accused in custody until the commitment has been made. This is intended to remove a difficulty actually experienced in cases where the committing Magistrate is unable to commit the accused on the same day.

*Clause* 21.—Section 276 is being amended to provide that ordinarily evidence shall be taken down in the form of a narrative.

*Clause* 22.—Section 277 is being amended to provide that evidence given in the language of the Court may be taken down in Hindi or English, if it is not practicable to take down such evidence in the language of the Court.

*Clause* 23.—Section 297 is being amended to provide that an affidavit may be sworn before any Judge or any Judicial or Executive Magistrate.

*Clause* 24.—Section 299 is being amended with a view to providing that in the case of an absconding accused, a Court competent to commit him for trial shall also be competent to record evidence in the absence of the accused.

*Clause* 25.—Sub-section (*2*) of section 309 is being amended to provide that adjournment shall not be granted only for the purpose of enabling the accused to show cause against the proposed sentence.

*Clause* 26.—The Table under sub-section (*1*) of section 320 is being amended to provide that only those cases of defamation may be compounded without the permission of the Court as are not mentioned against section 500, I.P.C., in column 1 of the Table under sub-section (*2*) of section 320.

*Clause* 27.—Section 323 is being amended so as to clarify that, where a commitment is made by a Magistrate after inquiry and trial, the procedure specified in Chapter XVIII shall apply to the commitment so made.

*Clause* 28.—Section 326 is being amended to empower a succeeding Judge to act on the evidence partly recorded by his predecessor.

*Clause* 29.—Section 374 is being amended to provide a right of appeal to a person where an appealable sentence has been passed against such person or against any other person convicted at the same trial.

*Clause* 30.—Section 428 is being amended to provide that the section will not apply to an imprisonment in default of payment of fine.

*Clause* 31.—Section 438, which provides for anticipatory bail, is being omitted.

*Clause* 32.—Section 468 is being amended to provide that, for the purpose of computing the period of limitation in relation to offences which may be tried together, the offence for which the longest sentence can be imposed shall be taken into account.

*Clause* 33.—Section 478 is being amended to dispense with the requirement of consultation with the High Court and also clarify that the sections referred to in clauses (*a*) and (*b*) mean those sections or any of them.

## FINANCIAL MEMORANDUM

The Bill provides for the appointment of Additional Public Prosecutors by the Government. This is only an enabling provision and the power is meant to be exercised only when the occasion demands. The appointment of Assistant Public Prosecutors by the Central Government will generally be made from departmental officers. Necessary provisions for these will be made in the appropriate budget as and when the occasion arises. It is, therefore, not possible to give an estimate of the actual expenditure in this behalf at this stage.

II

BILL NO. XXXVIII OF 1976

*A Bill to amend the Public Premises (Eviction of Unauthorised Occupants) Act, 1971.*

BE it enacted by Parliament in the Twenty-seventh Year of the Republic of India as follows:—

Short title.

1. This Act may be called the Public Premises (Eviction of Unauthorised Occupants) Amendment Act, 1976.

Amendment of section 3.

2. In section 3 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (hereinafter referred to as the principal Act), in clause (*a*), after the words "officers of equivalent rank", the words "of the Secretariat of the Lok Sabha or the Secretariat of the Rajya Sabha or" shall be inserted. 40 of 1971

Amendment of section 4.

3. In section 4 of the principal Act,—

(*a*) in sub-section (*2*), in clause (*b*), for the words "date as is specified in the notice, being a date not earlier than ten days", the words and brackets "date as is specified in the notice (hereafter in this section referred to as the specified date), being a date not earlier than seven days" shall be substituted;

(*b*) after sub-section (*2*), the following sub-section shall be inserted, namely:—

"(*2A*) The notice referred to in sub-section (2) shall also—

(*a*) require all persons concerned to produce on the specified date the evidence (if any) which such persons intend to rely in support of the cause shown;

(*b*) state that the persons concerned will be given an opportunity of being heard on the specified date or any subsequent date to which the proceedings may be adjourned by the estate officer.".

Amendment of section 5.

4. In section 5 of the principal Act, in sub-section (*2*),—

(*a*) for the words "within thirty days of", the words "within a period of fifteen days from" shall be substituted;

(*b*) for the words "in this behalf may", the words "in this behalf may, after the expiry of the aforesaid period," shall be substituted.

Insertion of new section 5A.

5. After section 5 of the principal Act, the following section shall be inserted, namely:—

Order of demolition of unauthorised construction.

"5A. (*1*) Where the erection of any building or execution of any work has been commenced, or is being carried on, or has been completed, on any public premises by any person in occupation of such public premises under an authority (whether by way of grant or any other mode of transfer), and such erection of building or execution of work is in contravention of, or not authorised by, such authority, then, the estate officer may, in addition to any other action that may be taken under this Act or in accordance with the terms of the authority aforesaid, make an order, for reasons to be recorded therein, directing that such erection or work shall be demolished by the person at whose instance the erection or work has been commenced, or is being carried on, or has been completed, within such period, as may be specified in the order, not being less than seven days, or more than fifteen days, from the date of the publication of the order under sub-section (*3*):

Provided that no order under this sub-section shall be made unless the person concerned has been given, by means of a notice served in the prescribed manner, a reasonable opportunity of showing cause why such order should not be made.

(*2*) Where the erection or work has not been completed, the estate officer may, by the same order or by a separate order, whether made at the time of the issue of the notice under the proviso to sub-section (*1*) or at any other time, direct the person at whose instance the erection or work has been commenced, or is being carried on, to stop the erection or work until the expiry of the period within which an appeal against the order of demolition, if made, may be preferred under section 9.

(3) The estate officer shall cause every order made under sub-section (1), or as the case may be, sub-section (2), to be affixed on the outer door, or some other conspicuous part, of the public premises.

(4) Where no appeal has been preferred against the order of demolition made by the estate officer under sub-section (1) or where an order of demolition made by the estate officer under that sub-section has been confirmed on appeal, whether with or without variation, the person against whom the order has been made shall comply with the order within the period specified therein or, as the case may be, within the period, if any, fixed by the appellate officer on appeal and on the failure of the person to comply with the order within such period the estate officer, or any other officer duly authorised by the estate officer in this behalf, may cause the erection or work to which the order relates to be demolished.

(5) Where an erection or work has been demolished, the estate officer may, by order, require the person concerned to pay the expenses of such demolition.".

Amendment of section 6.

6. In sub-section (2) of section 6 of the principal Act, after the words "the corporate authority", the words "or, as the case may be, the amount, if any, due in respect of any public premises controlled by the Secretariat of the Lok Sabha or the Secretariat of the Rajya Sabha" shall be inserted.

Amendment of section 9.

7. In section 9 of the principal Act,—

(a) in sub-section (1), for the word and figure "section 5", the words, figures, brackets and letter "section 5 or sub-section (1) of section 5A" shall be substituted;

(b) in sub-section (2), after clause (a), the following clause shall be inserted, namely:—

"(aa) in the case of an appeal from an order under sub-section (1) of section 5A, within fifteen days from the date of publication of the order under sub-section (3) of that section:";

(c) in sub-section (3), the following proviso shall be inserted at the end, namely:—

"Provided that where the appeal is from an order of demolition under sub-section (1) of section 5A and the erection of any building or execution of any work has not been completed at the time of the making of the order of demolition, no order staying the enforcement of the order of demolition shall be made by the appellate officer unless such security, as may be sufficient in the opinion of the appellate officer, has been given by the appellant for not proceeding with such erection or work, pending the disposal of the appeal.".

Amendment of section 13.

8. In sub-section (2) of section 13 of the principal Act, after the words "the corporate authority", the words "or, as the case may be, any amount due in respect of any public premises controlled by the Secretariat of the Lok Sabha or the Secretariat of the Rajya Sabha" shall be inserted.

Amendment of section 14.

**9.** In section 14 of the principal Act,—

(*a*) for the words "pay the arrears of rent", the words, brackets, figures and letter "pay the expenses of demolition payable under sub-section (5) of section 5A or the arrears of rent" shall be substituted;

(*b*) for the words, brackets and figures "the Central Government or the corporate authority under sub-section (5) of section 9 or any portion of such rent", the words, brackets and figures "the Central Government or the Secretariat of the Lok Sabha or the Secretariat of the Rajya Sabha or the corporate authority under sub-section (5) of section 9 or any portion of such expenses, rent" shall be substituted.

Amendment of section 15.

**10.** In section 15 of the principal Act,—

(*a*) for the words "public premises or the recovery of the arrears of rent", the words, figures, letter and brackets "public premises or the demolition of any erection or work, or the stopping of the erection or work, under section 5A or the recovery of the expenses of such demolition payable under sub-section (5) of that section or the arrears of rent" shall be substituted;

(*b*) for the words, brackets and figures "awarded to the Central Government or the corporate authority under sub-section (5) of section 9 or any portion of such rent", the words, brackets and figures "awarded to the Central Government or the Secretariat of the Lok Sabha or the Secretariat of the Rajya Sabha or the corporate authority under sub-section (5) of section 9 or any portion of such expenses, rent" shall be substituted.

Amendment of section 16.

**11.** In section 16 of the principal Act, after the words "the corporate authority", the words "or the Secretariat of the Lok Sabha or the Secretariat of the Rajya Sabha" shall be inserted.

Amendment of section 18.

**12.** In section 18 of the principal Act, in sub-section (3), for the words "in two successive sessions, and if, before the expiry of the session in which it is so laid or the session immediately following", the words "in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid" shall be substituted.

## STATEMENT OF OBJECTS AND REASONS

The Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (hereinafter referred to as the said Act) was enacted mainly to provide for speedy and summary eviction of unauthorised occupants from public premises.

2. Section 3 of the said Act empowers the Central Government to appoint such persons as are gazetted officers of Government or officers of equivalent rank of the corporate authority to be estate officers for the purposes of the Act. Under section 3, as it now stands, it is not possible to appoint officers of the Secretariat of the Lok Sabha or the Secretariat of the Rajya Sabha as estate officers. It is considered that there should be a provision enabling the appointment of such officers also as estate officers to deal with public premises under the administrative control of the Secretariat of the Lok Sabha and the Secretariat of the Rajya Sabha.

3. Sections 4 and 5 of the said Act lay down the procedure for the eviction of unauthorised occupants from public premises. The time at present taken for the conclusion of the proceedings of eviction is considered to be on the high side and it is felt that speedier conclusion of the proceedings should be ensured by reducing the period of notice to show cause and the time given for compliance with the order of eviction made by the estate officer.

4. The existing provisions of the said Act are inadequate to deal with the problem of unauthorised constructions by persons who have been permitted to occupy public premises. It is considered necessary to make a provision in that behalf.

5. The Bill seeks to achieve the above objectives.

NEW DELHI;
*The 13th August*, 1976.

K. RAGHU RAMAIAH.

## MEMORANDUM REGARDING DELEGATED LEGISLATION

The proviso to sub-section (1) of the new section 5A sought to be inserted in the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, by clause 5 of the Bill empowers the Central Government to make rules in regard to the manner of service of the notice referred to in that proviso. This relates to a matter of procedural detail and as such the delegation of legislative power involved is of a normal and routine character.

III

BILL NO. XXXVII OF 1976

*A Bill further to amend the Insecticides Act, 1968.*

BE it enacted by Parliament in the Twenty-seventh Year of the Republic of India as follows:—

Short title.

1. This Act may be called the Insecticides (Amendment) Act, 1976.

Amendment of section 4.

2. In section 4 of the Insecticides Act, 1968 (hereinafter referred to as the principal Act), 46 of 1968.—

(*a*) in sub-section (*3*),—

(*i*) after clause (*xiii*), the following clauses shall be inserted, namely:—

"(*xiiia*) the Animal Husbandry Commissioner, Department of Agriculture, *ex officio*;

(*xiiib*) the Joint Commissioner (Fisheries), Department of Agriculture, *ex officio;*

(*xiiic*) the Deputy Inspector General of Forests (Wild Life), Department of Agriculture, *ex officio;*

(*xiiid*) the Industrial Adviser (Chemicals), Directorate General of Technical Development, *ex officio;*";

(*ii*) after clause (*xx*), the following clause shall be inserted, namely:—

"(*xxi*) one ecologist to be nominated by the Central Government.";

(b) in sub-section (4), for the brackets and figures "(*xx*)", the brackets and figures "(*xxi*)" shall be substituted;

(c) for sub-section (5), the following sub-section shall be substituted, namely:—

"(5) No act or proceeding of the Board, the Registration Committee or any Committee appointed under section 6, shall be called in question on the ground merely of the existence of any vacancy in, or any defect in the constitution of, the Board, the Registration Committee or such Committee, as the case may be.".

Amendment of section 9.

3. In section 9 of the principal Act,—

(*i*) in sub-section (3), for the words "on such conditions", the words "on such conditions as may be specified by it" shall be substituted;

(*ii*) after sub-section (3), the following sub-sections shall be inserted, namely:—

"(3*A*) In the case of applications received by it prior to the 31st day of March, 1975, notwithstanding the expiry of the period specified in sub-section (3) for the disposal of such applications, it shall be lawful and shall be deemed always to have been lawful for the Registration Committee to dispose of such applications at any time after such expiry but within a period of one year from the commencement of the Insecticides (Amendment) Act, 1976:

Provided that nothing contained in this sub-section shall be deemed to make any contravention before the commencement of the Insecticides (Amendment) Act, 1976, of a condition of a certificate of registration granted before such commencement, an offence punishable under this Act.

(3*B*) Where the Registration Committee is of opinion that the insecticide is being introduced for the first time in India, it may, pending any enquiry, register it provisionally for a period of two years on such conditions as may be specified by it.

(3*C*) The Registration Committee may, having regard to the efficacy of the insecticide and its safety to human beings and animals, vary the conditions subject to which a certificate of registration has been granted and may for that purpose require the certificate-holder by notice in writing to deliver up the certificate to it within such time as may be specified in the notice.".

Amendment of section 13.

4. In section 13 of the principal Act,—

(*a*) in sub-section (1),—

(*i*) after the words "distribute any insecticide", the words "or to undertake commercial pest control operations with the use of any insecticide" shall be inserted;

(*ii*) after the proviso, the following proviso shall be inserted, namely:—

"Provided further that any person engaged in the commercial pest control operations immediately before the commencement of the Insecticides (Amendment) Act, 1976, shall make an application to the licensing officer for the grant of a licence within a period of six months from the commencement of the said Act.";

(*b*) in the proviso to sub-section (*4*), for the words "the proviso", the words "the first proviso or, as the case may be, the second proviso" shall be substituted.

(c) after sub-section (*4*), the following sub-section shall be inserted, namely:—

"(*5*) In prescribing fees for the grant or renewal of licences under this section, different fees may be prescribed for the sale or distribution of insecticides for purposes of domestic use and for other purposes.".

Amendment of section 18.

**5.** In section 18 of the principal Act,—

(*a*) in sub-section (*1*), for the words "transport or cause to be used", the words "transport, use, or cause to be used" shall be substituted;

(*b*) in sub-section (*2*), after the words "sale or distribute", the words "or use for commercial pest control operations" shall be inserted.

Amendment of section 21.

**6.** In section 21 of the principal Act,—

(*a*) for sub-section (*2*), the following sub-section shall be substituted, namely:—

"(*2*) The provisions of the Code of Criminal Procedure, 1973 shall, as far as may be, apply to any search or seizure under this Act as they apply to any search or seizure made under the authority of a warrant issued under section 94 of the said Code."; 2 of 1974.

(*b*) in sub-section (*3*), for the words and figures "section 57 of the Code of Criminal Procedure, 1898", the words and figures "section 42 of the Code of Criminal Procedure, 1973" shall be substituted. 5 of 1898. 2 of 1974.

Amendment of section 31.

**7.** In sub-section (*2*) of section 31 of the principal Act, for the words "presidency magistrate or a magistrate of the first class", the words "metropolitan magistrate or a judicial magistrate of the first class" shall be substituted.

Omission of section 32.

**8.** Section 32 of the principal Act shall be omitted.

Amendment of section 36.

**9.** In section 36 of the principal Act,—

(*a*) in sub-section (*2*),—

(*i*) in clause (*f*), the words "the conditions of registration and" shall be omitted;

(*ii*) clause (*x*) shall be omitted;

(*b*) in sub-section (*3*), for the words "or in two successive sessions, and if before the expiry of the session in which it is so laid or the session immediately following", the words "or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid" shall be substituted.

## STATEMENT OF OBJECTS AND REASONS

The Insecticides Act, 1968 was brought into force with effect from 1st August, 1971 with a view to regulating the import, manufacture, sale, transport, distribution and use of insecticides in order to prevent risks to human beings or animals.

2. Under section 9 of the Act every person desiring to import or manufacture any insecticide is required to obtain a certificate of registration from the Registration Committee. The certificate is to be subject to such conditions as may be prescribed by the Central Government. While examining the rules regulating the grant of certificate of registration, the Committee on Subordinate Legislation desired that the conditions of registration be codified and incorporated in the rules or the Act be amended to delegate the power to specify the conditions of registration to the Registration Committee. Since it was not possible to prescribe any set of conditions, the second alternative of empowering the Registration Committee to specify the conditions of registration is considered to be more feasible and section 9 is proposed to be amended accordingly.

3. Under the Act, applications for registration were required to be disposed of within the time prescribed in the Act. The number of applications being very large, it has not been possible for the Registration Committee to dispose of the applications within the prescribed time. It is proposed to extend the time limit by one year.

4. In the light of the experience gained in the implementation of the Act, it is proposed to enlarge the membership of the Central Insecticides Board by including persons associated with Animal Husbandry, Fisheries, Wild life, Ecology and Chemicals. It is also proposed to enlarge the scope of section 9 of the Act by making a provision for recall and for the issue of provisional registration certificates.

5. It is also proposed to amend section 13 to provide for differential licence fee as well as also for bringing the commercial pest control operations under the purview of licensing.

6. It is also proposed to avail of this opportunity to make certain other amendments in the Act such as the insertion of a provision to the effect that the proceedings of the Central Insecticides Board, Registration Committee and other Committees set up under the Act shall not be questioned on the ground of existence of any vacancy in, or defect in the constitution of, the Board, the Registration Committee or other Committees and the recasting of the provision for laying of rules before Parliament in line with the pattern which is being adopted in all recent legislation.

7. The Bill seeks to achieve the aforesaid objectives.

ANNASAHEB P. SHINDE.

NEW DELHI;
*The 3rd August*, 1976.

## MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 3 of the Bill seeks to amend section 9 of the Act to empower the Registration Committee to specify the conditions of registration.

The delegation of power, if any, involved in this behalf pertains to matters of detail and procedure and is of a normal character.

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S. S. BHALERAO,
*Secretary-General.*

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